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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 294—Misc.

L. L. MOORE, AN INDIVIDUAL DOING BUSINESS AS MOORE'S BAKERY,

Petitioner,

vs.

MEAD SERVICE COMPANY, A CORPORATION, AND MEAD'S FINE BREAD COMPANY, A CORPORATION,

Respondents

BRIEF OF RESPONDENTS IN ANSWER TO PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Supreme Court of the United States:

Statement of the Case

The Petitioner takes issue with the Court of Appeals in its statement of the facts of this case, and for this reason we set out a short resume of the testimony of the Petitioner and the Vice President of the Respondent Mead's Fine Bread Company which fully supports the statement of the Court of Appeals.

The Respondent Mead's Fine Bread Company is a New Mexico Corporation and had its principal office and plant in Clovis, New Mexico. The Respondent Mead Service

Company is a New Mexico Corporation and its principal place of business is in Clovis, New Mexico.

At the trial of the case the Petitioner, L. L. Moore, testified that Mead's Fine Bread Company had its plant in Clovis, New Mexico and started selling its bread in Santa Rosa, New Mexico, in January of 1948. (R. 12) The Petitioner felt that there was not enough business in Santa Rosa for him and an outside bakery and after a period of two months he obtained a building in Tucumcari, New Mexico, and told his landlord in Santa Rosa of his plan to move his plant. The landlord got some of the "fellows" together; and he, the landlord, and the others asked Petitioner what it would take to keep him in Santa Rosa. They asked Petitioner whether or not he would stay if all of the merchants in town agreed to patronize him. After thinking it over two or three days he decided that if all of the merchants wanted him to stay that bad he would remain provided they support him 100 per cent. The landlord and "fellows" prepared a petition and all except one merchant signed it "100 per cent" (R. 12, 13 & 14.) The petition was an agreement of every store to support the home town bakery "which was mine", "100 per cent" (R. 15). On the effective date of the petition all but one of the merchants refused to buy bread from Mead's Fine Bread Company (R. 33). The Petitioner testified that he knew about the petition, was willing to accept the benefits of the petition and decided to take advantage of whatever benefits would arise from the petition or boycott. That it was done with his consent and for his benefit (R. 45 & 46). He testified that the only way they could keep him in Santa Rosa was to deliver him all of the business. The petition had the effect of running Respondent out of town; and that he knew what the effect would be (R. 45 & 46). Mead's Fine Bread Company was the only competitor Petitioner had (R.

44). Petitioner testified that he was present at the meeting when the effective date of the petition was agreed upon and attended another meeting regarding the petition (R. 50 & 51). He stated that the petition started the price cutting, (R. 13) and that if the boycott had been successful he would have had a monopoly with the exception of one small store (R. 48). He testified that the respondents reduced the price of bread—only—and only in Santa Rosa (R. 43). That the Petitioner and Respondent Mead's Fine Bread Company were competitors in a total of 69 stops or retail outlets in the Santa Rosa area (R. 69). And that there was no disturbance of price in 9 towns in the area (R. 43).

E. E. Corcorran testified that he was the Vice President of the Respondent Mead's Fine Bread Company, and that the merchants in Santa Rose boycotted Mead's Fine Bread Company. That the price of bread was cut to break the boycott, and that such means was the only way Mead's Fine Bread Company had of staying in the stores (R. 75). Every merchant told him of the petition that had been brought around to boycott Mead's Fine Bread Company. All outlets except one were lost until the price of bread was cut (R. 76). When the price was reduced Respondent was able to get back into part of the outlets but did not get back into all of them, and that the boycott was still effective. (R. 68).

Respondent points out in his brief before the Court of Appeals (page 3) that the reduction of the price of bread was effective only in the City of Santa Rosa where the boycott occurred, and that at the time of the trial (over a year later) Mead's Fine Bread Company was selling bread to eight out of the eleven outlets they had in Santa Rosa immediately prior to the boycott. In other words, the boycott was still effective in three of eleven outlets (27%).

The record conclusively shows that the Respondent Mead

Service Company did not perform or participate in any matter complained of by the Petitioner. For this reason references throughout this brief necessarily refer to the Respondent Mead's Fine Bread Company.

The Opinion of the United States Court of Appeals for the Tenth Circuit Is Reported in 184 Federal 2nd 338.

Jurisdiction

Petitioner's brief does not contain a statement of the grounds on which the jurisdiction of this Court is invoked, as required by Rule 27 (c) of the Rules of this Court.

Construction of Brief

Parts I through IV deal with matters raised by Petitioner in his Petition for Writ of Certiorari. Parts V and VI present additional reasons why Certiorari should be denied.

Summary of the Argument

Part I

The United States Court of Appeals properly held that Petitioner violated the Anti-Trust Laws of the State of New Mexico and declared policy of the United States under Respondent's statement of facts and argument.

Part II

The United States Court of Appeals did not err in finding Petitioner a party to a combination in restraint of trade or individually attempting to monopolize trade where Petitioner by his own testimony establishes that he was a principal in the combination in restraint of trade and sought to drive Respondent completely out of the market and exclude all others in the future by a boycott.

Part III

A. The United States Court of Appeals properly applied the doctrine of "clean hands" and "pari delicto" to the Petitioner who was acting in violation of the Anti-Trust Laws of his State and declared policy of the United States prior to and during the time he charges that Respondent violated the Robinson-Patman Act.

B. Petitioner's contention that his business was not profitable did not render an unlawful conspiracy in restraint of trade or attempt to monopolize trade, lawful.

C. Petitioner's contention that he abandoned an unlawful conspiracy in restraint of trade or an attempt to monopolize trade cannot be sustained where it is shown that, as one of the principals in conspiracy and as the principal in an attempt to monopolize trade, he continued to accept the benefits thereof even to date of trial of this cause and made no effort to end the conspiracy.

D. Petitioner's real contention is that his only competitor should not be allowed to compete with him on equal terms. Such a compliant is not actionable.

Part IV

Petitioner's complaint is not actionable under the Robinson-Patman Act; because the record reveals that all sales made by Respondent, of which complaint is made, were made in Santa Rosa, New Mexico, alone; and that the bread sold was manufactured in New Mexico and never at any time moved in commerce; therefore, the dispute involved is purely of a local nature and had no impact upon interstate commerce.

Part V

In the absence of some showing that a price discrimination may substantially have the effect of lessening, in-

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